

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Submitted on Briefs February 8, 2008

DANNY RAY MEEKS v. TENNESSEE DEPARTMENT OF CORRECTION

Appeal from the Chancery Court for Hickman County
No. 06-393C Timothy L. Easter, Judge

No. M2007-01116-COA-R3-CV - Filed May 15, 2008

An inmate at the Turney Center Industrial Prison filed this Petition for Common Law Writ of Certiorari in the Chancery Court of Hickman County. The inmate alleges in the petition, *inter alia*, that the Prison Disciplinary Board deviated from the Uniform Disciplinary Procedures and, as a result, he was erroneously found guilty of refusing to submit to a drug screening. After reviewing the administrative record and the penalties imposed by the Prison Disciplinary Board, the trial court granted the Department of Correction's motion for judgment on the record, thereby dismissing the inmate's claim. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Danny R. Meeks, Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; Michael E. Moore, Solicitor General; and Joshua D. Baker, Assistant Attorney General, for the appellee, Tennessee Department of Correction.

OPINION

On August 20, 2006, while the petitioner, Danny Ray Meeks, was an inmate at the Turney Center Industrial Prison in Only, Tennessee, he was randomly selected for drug screening. Pursuant to its protocol, prison officials gave Meeks a glass of water to drink and afforded him a period of up to two hours in which to provide a urine sample. At the end of the two-hour period, Meeks informed the Inmate Relations Coordinator that he could not provide a urine sample because he had a psychological condition known as "paruresis," which is commonly referred to as "shy bladder syndrome" or "stage fright." Meeks then requested that he be allowed to provide a blood sample for testing; however, his request was denied.

On the following day, Meeks was officially charged with the prison disciplinary infraction of refusing or attempting to alter a drug test. At the request of Meeks, the Turney Center Industrial Prison Inmate Disciplinary Board conducted a hearing. At the hearing Meeks attempted to introduce

what he claimed to be exculpatory documentary evidence. The Board chairman, Sgt. Larry Harper, however, excluded the evidence. Following the conclusion of the brief hearing, the Board found Meeks guilty of the disciplinary charge. As punishment for his violation, Meeks was ordered to serve ten days in punitive segregation. He was additionally ordered to pay a four-dollar fine and a twenty-five dollar fee for the urinalysis kit. The ten-day sentence was suspended for six months.

Meeks appealed the Board's decision to the Warden of Turney Center, Wayne Brandon, who denied his appeal. Meeks then appealed the Warden's decision to the Commissioner of the Tennessee Department of Correction. That appeal was also denied. Having exhausted his administrative remedies, Meeks filed this Petition for Common Law Writ of Certiorari in the Chancery Court of Hickman County.

In the petition, Meeks alleged that the Inmate Disciplinary Board failed to follow the uniform disciplinary procedures at the hearing. He specifically contends that Chairman Harper: (1) reached a decision not supported by a preponderance of the evidence; (2) denied Meeks the right to introduce evidence of his medical condition; (3) based his decision on facts not presented at the hearing; and (4) failed to disqualify himself from the hearing despite the existence of a conflict of interest. Meeks further alleged that the four-dollar fine and the twenty-five dollar fee imposed on him violated his due process rights. Additionally, Meeks alleged that he was denied a liberty interest when his custody level was increased from minimum to medium, which rendered him ineligible to earn the maximum monthly allotment for sentence credits.

After the Chancellor granted the writ¹ on February 7, 2007, the Tennessee Department of Correction filed a certified copy of the administrative record from Meeks' prison disciplinary hearing before the Board. Thereafter, the Department filed a motion for judgment on the record. After reviewing the administrative record, the trial court determined that the hearing officer did not deviate from the uniform disciplinary procedure in a manner that effectively denied Meeks a fair disciplinary hearing. The Chancellor concluded that the four-dollar fine was *de minimis*, and therefore, did not implicate due process. Further, the Chancellor determined that the twenty-five dollar fee was appropriate because the Department Policy provided that any inmate who refused a drug screen will be assessed twenty-five dollars. The Chancellor also denied Meeks' claim concerning sentence credits upon a finding that Meeks had no liberty interest in the unearned sentence credits. Based upon these findings, the trial court concluded that Meeks was not entitled to relief; thus it quashed the writ, and dismissed the petition. This *pro se* appeal by Meeks followed.

The Statement of the Issues in Meeks' brief does not correspond with the issues Meeks focuses on in his brief. Nevertheless, in an effort to afford Meeks an opportunity to present his issues, we have endeavored to ascertain the issues he intended to raise. Based principally on the argument he presents in his brief, we believe his issues are the following: (1) whether the Chairman of the Inmate Disciplinary Board deviated from the Uniform Disciplinary Procedures in such a way

¹The grant or issuance of the writ is not an adjudication of the merits of a petition. *Keen v. Tennessee Dep't of Corr.*, No. M2007-00632-COA-R3-CV, 2008 WL 539059, at *2 (Tenn. Ct. App. Feb. 25, 2008) (no app. filed to date). It is simply an order to the lower tribunal to file the complete record of its proceedings so the trial court can determine whether the petitioner is entitled to relief. *Id.*

that would have affected the disposition of the case; and (2) whether the trial court erred in taxing the costs of the suit to Meeks. We will discuss each in turn.

ANALYSIS

The common-law writ of certiorari, such as that filed by Meeks, is the means by which a prisoner may seek review of decisions by prison disciplinary boards, parole boards, and other administrative tribunals. *Keen*, 2008 WL 539059, at *2. The grounds for relief under a writ of certiorari are quite limited. *Id.* Judicial review is limited to whether the administrative board: (1) has exceeded its jurisdiction, or (2) has acted illegally arbitrarily or fraudulently. *Id.* The reviewing court may not (1) inquire into the intrinsic correctness of the lower tribunal's decision, (2) reweigh the evidence, or (3) substitute its judgment for that of the lower tribunal. *Id.* Accordingly, the court's scope of review under the writ of certiorari does not involve an inquiry into the intrinsic correctness of the decision reached by the tribunal below, but only the manner in which the decision was reached. *Id.*

UNIFORM DISCIPLINARY PROCEDURES

Meeks alleges that the Inmate Disciplinary Board, chiefly the chairman, Sgt. Harper, deviated from the Tennessee Department of Correction's Uniform Disciplinary Procedures when Meeks was denied the opportunity to present exculpatory medical evidence. On appeal, Meeks contends the Chancellor erred by failing to require the Board to follow the Uniform Disciplinary Procedures.

The Uniform Disciplinary Procedures exist "[t]o provide for the fair and impartial determination and resolution of all disciplinary charges placed against inmates." TDOC Policy No. 502.01(II); see *Willis v. Tennessee Dep't of Corr.*, 113 S.W.3d 706, 713 (Tenn. 2003). Minor deviations from the procedures will not warrant dismissal of the disciplinary action unless the prisoner demonstrates "substantial prejudice as a result and the error would have affected the disposition of the case." TDOC Policy No. 502.01(V); see *Jeffries v. Tennessee Dep't of Corr.*, 108 S.W.3d 862, 873 (Tenn. Ct. App. 2002).

An inmate charged with a rule infraction has the right to appear in person before a disciplinary hearing officer or the board to challenge the imposition of disciplinary action taken against the inmate. TDOC Policy No. 502.01(VI)(E)(1).² At the hearing, the inmate has "a limited right to present exculpatory evidence." *Ivy v. Tennessee Dep't of Corr.*, No. M2001-01219-COA-R3-CV, 2003 WL 22383613, at *4 (Tenn. Ct. App. Oct. 20, 2003).

In the present matter, Board Chairman Harper conducted a hearing on September 13, 2006. At the hearing, Meeks proffered three documents to prove his disability. Two of the documents were "Inmate Inquiry Forms" and the third was an "Avoid Verbal Order" document.

²See TDOC Policy No. 502.01(VI)(E)(1), for exceptions.

The first document Meeks proffered was an Inmate Inquiry Form Meeks sent to Warden Brandon on the day after the incident in question. As Meeks explained it, he wanted to introduce the form to establish that he sent the form to Warden Brandon to request a blood test. Meeks further explained that Warden Brandon responded to the request on August 23, 2006, stating, “You will have to get an AVO [Avoid Verbal Orders document] that states you cannot give a urine sample!”

The second document Meeks proffered was an Avoid Verbal Order (“AVO”),³ which is a document from the medical staff stating that an inmate has a medical reason to avoid a verbal order from a prison official. Meeks obtained an AVO from Otis Campbell, M.D., one week after the incident at issue. The AVO stated, “Mr. Meeks has paruresis. *He can give urine samples*, however it may take several hours. TDOC Policy # 506.21 will allow dry celling for urine collection.”⁴ (emphasis added).

Meeks also proffered a second Inmate Inquiry Form, which he submitted to the Health Services Administrator, Ken Rhea, on August 22, 2006. Meeks used this form to request a psychological evaluation regarding his medical condition. Mr. Rhea responded to the inquiry stating that the medical staff of the prison cannot get involved in issues regarding random drug testing.

Chairman Harper excluded all three documents. Meeks contends the Chairman excluded the documents in error, which prejudiced his case.⁵ We have determined that the exclusion of these documents did not prejudice Meeks.

The most significant of the excluded documents is the AVO from Dr. Campbell. What is significant about the AVO is that Meeks has paruresis; however, his paruresis does not prevent him from providing a urine sample. To the contrary, as Dr. Campbell noted, Meeks “*can give urine samples*,” although it may take several hours to do so. Prison official Lloyd Conrad testified that he offered to dry cell Meeks in accordance with TDOC Policy No. 506.21(VI)(B)(9), which would have given him extra time; however, Meeks refused the opportunity.⁶

³ An AVO is a document allowing an inmate to Avoid Verbal Orders of a particular type. The actual AVO document in this case is termed a “Limited Activity Notice.”

⁴ “Dry cells” are jail cells without running water and are generally used for the purpose of discovering and securing any contraband smuggled by ingestion into the prison. *See United States v. Oakey*, 731 F.Supp. 1363, 1364-65 (S.D. Ind.1990). In this case, a dry cell would be used to facilitate the gathering of a urine sample.

⁵ Meeks also claims that correspondence with the facility psychiatrist, Dr. Redding, was also erroneously excluded. Meeks, however, failed to cite to the record regarding these documents, and the documents are not in the record. Additionally, Meeks failed to state their significance and failed to provide a cogent argument in favor of their admission into evidence. If reference is made to evidence, the admissibility of which is in controversy, “reference shall be made to the pages in the record at which the evidence was identified, offered, and received or rejected.” *See Tenn. R. App. P. 27(g)*. Meeks failed to include the evidence in the record and thus has failed to reference the evidence in his argument. Accordingly, we find the issue has been waived.

⁶ Meeks disputes that Conrad offered him a dry cell. The Warden, however, in affirming the disciplinary infractions stated that Meeks was “directed previous to the drug test [he] would be given the opportunity to be dry celled (continued...) ”

The other two documents do not support Meeks' claims. Meeks attempts to rely on these documents to insist that a blood sample is the only means by which he could be tested. Although blood testing is available and appropriate in some circumstances, TDOC Policy 506.21(VI)(B)(10), instructs that before an inmate is entitled to insist upon a blood test in lieu of a urine sample, the inmate is required to provide written evidence from the health care staff that his medical condition prevents him from providing a urine sample. None of the documents on which Meeks relies state that Meeks was *prevented* from providing a urine sample.⁷ Thus, Meeks had no right to insist upon a blood test.

The burden was on Meeks to establish that the exclusion of the documentary evidence affected the disposition of the case. *See* TDOC Policy No. 502.01(V); *see also Jeffries*, 108 S.W.3d at 873. Assuming *arguendo* that the excluded evidence should have been admitted, Meeks failed to establish that the exclusion of the documentary evidence affected the disposition of the case.

COSTS ASSOCIATED WITH THIS ACTION

Meeks contends that the trial court erred by assessing the costs against him. His argument is solely based on the fact he was declared indigent. We find no merit to his argument.

Tenn. Code Ann. § 41-21-801 *et seq.*, states that “[j]udgment may be rendered for costs at the conclusion of the suit, action, claim or appeal as in other proceedings. If the judgment against the inmate includes the payment of costs, the inmate shall be responsible for the full amount of the costs ordered.” Tenn. Code Ann. § 41-21-808(a).

Tennessee Code Annotated section 20-12-127(a) provides that any resident may file suit without providing security for costs and without prepaying the litigation tax by filing an oath of poverty and an affidavit of indigency. However, “[t]he filing of a civil action without paying the costs or taxes or giving security for the costs or taxes does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court.” Tenn. Code Ann. § 20-12-127(b). Moreover, in *Fletcher v. State*, 9 S.W.3d 103, 105 (Tenn. 1999), the Supreme Court of Tennessee stated that

neither the plain language of [Supreme Court Rule 29], nor the plain language of Tennessee Code Annotated section 20-12-127(a) (Supp. 1999), contemplates that indigent litigants are permanently relieved from their responsibility to pay litigation taxes. Rather, Rule 29 and section 20-12-127(a) only contemplate that an indigent

⁶(...continued)
if [he] was unable to provide a sample. [Meeks] refused.”

⁷Furthermore, all of the documents presented at the hearing were created at Meeks' request *after* he was charged with the disciplinary infraction, and they fail to demonstrate that Meeks had a legitimate, documented reason for refusing to provide a urine sample on the date of the offense.

litigant will not be denied access to the courts to commence a civil action solely because of an inability to pay litigation taxes.

Id. at 105.

We therefore affirm the taxing of costs against Meeks.

IN CONCLUSION

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against the Petitioner, Danny Ray Meeks.

FRANK G. CLEMENT, JR., JUDGE